

FINDINGS AND RECOMMENDATION

capricious or constituted an abuse of discretion. The ODRA therefore recommends that Integrity's Protest be denied in its entirety.

II. FINDINGS OF FACT

1. On February 7, 2006, the Region published the Solicitations for janitorial services at two locations in Southern Florida. The Solicitations both were set aside for small economically disadvantaged business ("SEDB") Section 8(a) Contractors. *See Agency Response at 26 and 35.*
2. Three prospective contractors including Integrity, responded to the Solicitations by the closing date of February 23, 2006. *Id.*
3. Section M of both Solicitations ("Solicitation Section M") stated that the awards would be made to the offers representing the best value to the Government "considering price and other factors as listed below". The five specified factors included:
 - Past performance and experience providing required service;
 - Business practice;
 - Customer satisfaction;
 - Ability to meet contract requirements in terms of other commitments and availability of resources to perform the work (or the ability to obtain them); and
 - Cost realism.

See Agency Response at 12.

4. Neither Integrity nor any other prospective bidder protested the terms of the Solicitations.
5. The Contracting Officer reviewed the three offers during the period February 23, 2006 through February 28, 2006. *See Agency Response at 12.*
6. The Contracting Officer considered each of the three bidders independently under the stated evaluation criteria and discussed his evaluation of each contractor in selection documents. *See Agency Response at 12 and 13.* The Award Decision Summary reflected his evaluation of each of the offerors, as follows.

Integrity Janitorial Corp.-Acceptable

Based on service currently being provided under Purchase Orders DTFSO-05-P-00576, Tamiami ATCT and AFSS janitorial, Contractor has met all requirements as per specifications and statement of work on before mentioned awarded purchase order without any major discrepancies that have been noted, meeting customer satisfaction, demonstrating ability to perform, and demonstrating proper business practice to date, and priced within the competitive range for service being provided. It is determined that based on service provided, an acceptable rating is reasonable for technical factors (a), (b), (c), (e) and (f.)

Nice Multiservice, Inc. –Acceptable

Based on service currently being provided under Purchase Orders DTFSO-06-P-00264, Miami ATCT janitorial, DTFASO-06-P-00518 all ATCT under the Ft. Lauderdale SSC and completed DTFASO-06-P-00406 PBI ATCT janitorial for two months, Contractor has met all requirements as per specifications and statement of work on before mentioned award purchase orders without any major discrepancies that have been noted, meeting customer satisfaction, demonstrating ability to perform and demonstrating proper business practice to date, and priced within the competitive range for service being provided. It is determined that based on service provided, an acceptable rating is reasonable for technical factors (a), (b), (c),(e) and (f).

Offeror X – Acceptable

Based on service currently being provided under multiple year option contracts DTFS06-04-C-01821 Miami ARTCC janitorial service (large contract), and DTFASO-05-P-00055 Miami ASR4 janitorial service, Contractor has met all requirements as per specifications and statement of work on before mentioned awarded purchase orders without any major discrepancies that have been noted, meeting customer satisfaction, demonstrating ability to perform, and demonstrating proper business practice to date, and priced within the competitive range for service being provided. It is determined that based on service provided, an acceptable rating is reasonable for technical factors (a), (b), (c), (e) and (f).

Id.

7. After completing his analysis of each offeror in the context of the selection criteria, the Contracting Officer next conducted a comparison of each offeror's technical rating and price. In that regard, he rated the offerors equally in terms of the technical selection criteria. *See* Agency Response at 13.
8. The Contracting Officer concluded that "while the above service providers rated equally, I base this award on the best interest of the Government, and consider the lowest cost." Agency Response at 13. In that regard, the price offered by Integrity was significantly higher than that offered by the eventual awardee, Nice Multiservice, Inc., and the second lowest priced bidder. *See* Agency Response at 14.
9. On March 1, 2006, the Contracting Officer informed Integrity by letter that awards under both Solicitations were being made to Nice Multiservice, Inc. and that Integrity's offer has been found not to be in the best interest of the Government. *See* Agency Response at 11.

10. On March 14, 2006, in response to a request from Integrity, the Contracting Officer provided a debriefing letter to Integrity. In that letter, the Contracting Officer confirmed that:

All of the service providers that submitted offers were ranked acceptable based on previous or current service provided to the Government. Since all providers rated equally, I based the award on the best interest of the Government and considered costs.

See Agency Response at 7.

11. Nice Multiservice, Inc. was directed to commence work at both locations on April 1, 2006. *See Agency Response at 1.*

12. Integrity filed its Protest with the ODRA on March 20, 2006, and supplemental Protest grounds were filed on March 28, 2006.

III. DISCUSSION

Integrity's Protest contends that the Region failed to follow the evaluation criteria set forth in Solicitation Section M and improperly converted the competition from best value to low price. *See Finding of Fact 1 ("FF")*. For its part, the Region denies that an improper basis for the award decision was used and has provided documentation supporting that the Contracting Officer did in fact do an analysis that was directly based on the evaluation criteria specified by Solicitation Section M. *See FF at 6, 7 and 8.* Moreover the Contracting Officer's award decision summary, *see FF at 7*, supports the Region's position that the Contracting Officer, in evaluating each of the offers of the three offerors, considered each of the stated five evaluation factors. The Contracting Officer considered: past performance and experience; business practices; customer satisfaction; ability to meet contract requirements; and cost realism. Integrity's allegation that the Contracting Officer failed to apply the best value criteria is completely unsupported in the record. Integrity has failed to show any evidence that the award

decision was flawed in any way. Rather, the decision process was conducted consistent with the terms of the Solicitations and the award decisions were supported by substantial evidence.

The Contracting Officer after evaluating each of the three offerors in terms of the five stated factors, concluded, that all of them should be rated equally. There is no basis in the record for questioning this conclusion. He then went on to consider the relative prices that had been offered by each. In that regard, it is undisputed that Integrity's offer was significantly higher than that of the winning offeror. It was also higher than that of the other offeror. The fact that the CO considered price after evaluating the technical factors does not convert the competition from best value to "low price". This is because price always must be considered—even in the context of a best value competition. *See* Acquisition Management System Section 3.2.2.3.1.2.3. Moreover, when offerors are rated technically equal or near equal, price typically becomes an increasingly important factor in a best value competition. Notably, in this case, Solicitation Section M expressly contemplated price as a factor. *See* FF 3.

In any bid protest the burden of proof in establishing that the Government's award decision lacked a rational basis, was arbitrary or capricious or reflected an abuse of discretion, lies with the Protester. *Protest of Global System Technologies, Inc. 04-ODRA-00307*. In this case, Integrity's Protest was comprised of allegations that reflect a misunderstanding by the Protester of the evaluation process that are not supported by the record. Under such circumstances, Integrity failed to meet its burden and its Protest therefore must be denied.

IV. CONCLUSION

For the reasons discussed above, the ODRA recommends that the bid protest of Integrity be denied in its entirety.

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Anthony N. Palladino
Director
FAA Office of Dispute Resolution for Acquisition

April 25, 2006